

January 18, 2008

Claudia Fenwick, et al.
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Re: Case No. 80-06, Fenwick v. Chelsea Towers Condominium

ORDER DISMISSING COMPLAINT

On November 7, 2007, the Respondent Chelsea Towers Condominium filed a Motion to Dismiss or Entry of Summary Judgment, Alternative Motion to Exclude Testimony and Motion to Hold Complainants In Contempt and Request for Attorney's Fees.

The relevant facts of this dispute are as follows:

The Commission on Common Ownership Communities (CCOC, or the Commission) accepted jurisdiction of several complaints filed by Claudia Fenwick, Orris Bensel, and Dr. Parviz Parsa against the Respondent. The dispute was originally set for a hearing in July, 2007, and the notice of hearing included a copy of the Commission's brochure, *How to Prepare for Your Hearing With the Commission on Common Ownership Communities*. Both parties initiated discovery against each other, and several disputes ensued. The Hearing Panel continued the July hearing date pending resolution of the discovery disputes, and issued several Orders Regarding Discovery Disputes on August 1, 2007. One of these Orders required the Complainants to file their answers to the Respondent's Interrogatories by August 17, 2007. At the Respondent's request, the Hearing Panel also agreed to hold a Prehearing Conference on September 19, 2007.

At the Prehearing Conference, which all the parties attended, the Hearing Panel made several rulings disposing of additional discovery disputes. The Panel ordered Respondent to make available for inspection the numerous documents requested by the Complainants. It also ordered Complainants to file their answers to the Respondent's Interrogatories by October 26, 2007, together with a summary of the testimony they expected from the numerous witnesses they wanted the Commission to subpoena for the hearing. On October 15, 2007, the Panel notified the parties that the hearing was set for January 22, 2008.

By November 7, 2007, the Complainants had not filed any answers to the Interrogatories and had not submitted any information in support of their subpoena requests, and the Respondent moved for sanctions. The Panel ordered the Complainants to file their response by December 14, 2007. Complainant Bensel wrote to the staff stating that she was confused about the status of the case, and the Commission staff sent her a lengthy reply on November 15, 2007, reviewing the

Panel's rulings in this dispute, reminding her that she had been ordered to reply to the Interrogatories and had not yet done so, and that she must reply to the Motion to Dismiss by December 14, 2007.

By the end of the year, however, the Complainants had not filed any response to the Interrogatories, had not filed any information supporting their subpoena requests, and had not filed any response to the Respondent's pending Motion to Dismiss. Nonetheless, the Panel gave them yet more time to respond to the Motion, setting a final deadline of January 11, 2008.

Complainants Fenwick and Bensel (but not Parsa) filed a response on January 11, 2008. Their response did not explain why they did not answer the Interrogatories. Complainants instead argued that the Respondent's Motions were "unlawful" and that their complaint could not be dismissed because the Commission was not a "court of law."

As a result of the foregoing facts, the Hearing Panel makes the following determinations and rulings:

The right of prehearing discovery is granted to the parties under Sections 10B-10(a)(1) and 2A-7(b)(4) of the Montgomery County Code, and by COMCOR 10B.06.01.04. Properly conducted, prehearing discovery helps the parties to present their cases and defenses more effectively and assists the hearing panel in conducting a hearing more efficiently. Under Section 2A-8(j) of the Montgomery County Code, a hearing panel may penalize a party who fails to follow the rules for hearings and prehearing procedures.

The Hearing Panel is aware that the Complainants are not attorneys familiar with the administrative hearing process, nor are they represented by an attorney. The Hearing Panel and its staff have made every reasonable effort to accommodate the Complainants and to give them a fair opportunity to comply with their obligations. Furthermore, the Hearing Panel notes that the Respondent has fully complied with all of the Panel's discovery orders, and has made requested documents available to the Complainants. However, the Complainants have not provided any documents at all to the Respondent, and the Complainants have repeatedly failed to obey the Panel's Orders to answer the Respondent's approved Interrogatories. Nor have the Complainants, in spite of several requests from the Panel, ever explained their failure to answer the Interrogatories. Instead, the Complainants appear to argue that they have no duty to obey the Panel's Orders because the Panel is not a court of law.

The Complainants are mistaken in this argument, and the Panel has attempted to explain this to them at the Prehearing Conference. The Commission staff has also attempted to educate them. Chapter 10B of the County Code clearly grants the Commission the authority to hear and resolve disputes, and provides that its decisions are final, binding, and enforceable unless reversed on appeal to the Circuit Court. Chapter 10B itself was upheld as valid by the Court of Appeals in

Dumont Oaks Community Association v. Montgomery County, 333 Md. 202 (1993).

In view of the fact that the Respondent has complied with its discovery obligations, and that the Complainants have repeatedly ignored this Panel's orders to answer Interrogatories, the Panel concludes that it has no choice but to grant the Respondent's Motion to Dismiss. However, the Panel denies the remaining Motions, including the Motion to assess attorney's fees against the Complainants.

It is therefore **ORDERED that**,

(1) This complaint is dismissed without prejudice to its being refiled in a different forum. It may not be refiled with the Commission.

(2) Any party aggrieved by this Order may file an appeal with the Montgomery County Circuit Court within 30 days pursuant to the Rules for Appeals from Administrative Agencies.

Commissioners Negro and Gannon concur.

Julie Dymowski, Esq., Panel Chair